

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Service Rules for the 698-746, 747-762 |) | WT Docket No. 06-150 |
| and 777-792 MHz Bands |) | |
| |) | |
| Revision of the Commission's Rules to |) | CC Docket No. 94-102 |
| Ensure Compatibility with Enhanced 911 |) | |
| Emergency Calling Systems |) | |
| |) | |
| Section 68.4(a) of the Commission's |) | WT Docket No. 01-309 |
| Rules Governing Hearing Aid- |) | |
| Compatible Telephones |) | |
| |) | |
| Biennial Regulatory Review – |) | WT Docket No. 03-264 |
| Amendment of Parts 1, 22, 24, 27, and 90 |) | |
| to Streamline and Harmonize Various |) | |
| Rules Affecting Wireless Radio Services |) | |
| |) | |
| Former Nextel Communications, Inc. |) | WT Docket No. 06-169 |
| Upper 700 MHz Guard Band Licenses |) | |
| and Revisions to Part 27 of the |) | |
| Commission's Rules |) | |
| |) | |
| Implementing a Nationwide, Broadband, |) | PS Docket No. 06-229 |
| Interoperable Public Safety Network in |) | |
| the 700 MHz Band |) | |
| |) | |
| Development of Operational, Technical |) | WT Docket No. 96-86 |
| and Spectrum Requirements for Meeting |) | |
| Federal, State and Local Public Safety |) | |
| Communications Requirements Through |) | |
| the Year 2010 |) | |

COMMENTS OF UNION TELEPHONE COMPANY

EXECUTIVE SUMMARY

Union Telephone Company applauds the Federal Communications Commission's tentative decision to offer a wide variety of different sized license areas in the 700 MHz Commercial Services band auction. It is critical that the FCC adopt a band plan that will enable all carriers, including small carriers that focus on providing service in rural areas, to obtain 700 MHz spectrum in a manner that best fits their individual business plans and the needs of rural consumers. Therefore, Union recommends that the FCC adopt its proposed band plan for the Lower 700 MHz Commercial Services band and the second proposed band plan for the Upper 700 MHz Commercial Services band.

Union strongly opposes the FCC's proposal for imposing performance requirements based on geographic benchmarks combined with "keep what you use" re-licensing mechanism for small, rural carriers. While strict performance requirements in conjunction with the threat of losing spectrum may be appropriate for large carriers, it is inconsistent with the FCC's goal of providing flexibility to small carriers to deploy spectrum-based services in more sparsely populated areas without being bound to specific geographic coverage requirements. The FCC must ensure that it does not unfairly punish rural carriers who cannot afford to engage in overly aggressive build outs due to the economics of providing service in rural areas. The FCC should also deny Frontline's proposal because it is unlikely to facilitate the prompt deployment of broadband service to rural areas. Similarly, the FCC should not adopt any proposal that would limit the eligibility of rural incumbent telephone companies, wireless carriers, or cable operators from bidding on 700 MHz spectrum.

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COMMENTS OF UNION TELEPHONE COMPANY

Union Telephone Company (“Union”), through its undersigned counsel, respectfully submits these Comments in response to the *Report and Order and Further Notice of Proposed Rulemaking* (“700MHz FNPRM”) in the above-captioned matter,¹ pursuant to section 1.415 of the Federal Communications Commission’s (“FCC’s”) rules.²

I. BACKGROUND

Union was founded in 1914 and has a long-standing history of providing vital telecommunications services in underserved rural areas. Based in Mountain View, Wyoming, Union provides local telephone service to approximately twenty-five rural communities in parts of Wyoming, Colorado, and Utah. In 1990, Union expanded to cellular service and now provides, or is licensed to provide, coverage to an area encompassing over 123,611 square miles of mostly rural country. Although Union commenced operations with only eight cell sites, the demand for cellular service has caused this number to multiply to 200 cell sites located throughout Wyoming, northwestern Colorado, and parts of Utah.

¹ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-120, Hearing Aid-Compatible Telephones; WT Docket No. 01-309; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules; WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72 (rel. April 27, 2007), 72 Fed. Reg. 24238 (May 2, 2007) [hereinafter *700MHz FNPRM*].

² 47 C.F.R. § 1.415 (2006).

Union is currently licensed in sixteen Cellular Market Areas (“CMAs”) for Lower 700 MHz band C Block spectrum in rural areas in Wyoming, Colorado, and Utah.³ Union was also the high bidder on six CMA licenses and two Basic Economic Area (“BEA”) licenses in Auction 66, for Advanced Wireless Services (“AWS”) licenses in the 1710-1755 MHz and 2110-2155 MHz bands (“1.7 GHz” and “2.1 GHz” bands).⁴ Besides basic telephone and cellular service, Union also offers long distance, Internet, and cable television service.

Union plans to continue upgrading its network with advanced technologies in order to deploy both high-quality voice services and even more innovative data services to its rural subscribers. As such, Union has a significant interest in the FCC’s proposals for reconfiguration of the band plan and service rules for commercial wireless licenses in the 698-746, 747-762, and 777-792 MHz bands (the “700 MHz Commercial Services band”), particularly as they impact service to rural areas. As discussed herein, Union supports the proposals described below to the extent that they will facilitate access to this spectrum and encourage deployment in rural areas.

11. THE FCC SHOULD ADOPT A BAND PLAN THAT WILL ENABLE SMALL, RURAL CARRIERS TO OBTAIN 700 MHZ SPECTRUM AND PROMOTE DEPLOYMENT IN RURAL AREAS

Union applauds the FCC’s decision to replace the unassigned Economic Area Grouping (“EAG”)-sized license areas, as established under the original 700 MHz Commercial Services band plan, with a mix of geographic licensing areas consisting of CMAs, Economic Areas

³ Lower 700 MHz Band Auction Closes, DA 02-2323, Public Notice, Attachment A (rel. Sept 20, 2002).

⁴ Auction of Advanced Wireless Services Licenses Closes, DA 06-1882, Public Notice, Attachment A (rel. Sept. 20, 2006); BEA143-C (Casper WY-ID-UT); BEA148-C (Idaho Falls ID-WY); CMA299-A (Casper, WY); CMA348-A (Colorado 1-Moffat); CMA718-A (Wyoming 1-Park); CMA719-A (Wyoming 2-Sheridan); CMA721-A (Wyoming 4-Niobrara); CMA722-A (Wyoming 5-Converse).

(“EAs”), and Regional Economic Area Groupings (“REAGs”). By auctioning additional spectrum in the 700 MHz Commercial Services band over service area sizes other than EAGs, small and regional carriers that have a history of providing service to rural areas will have a meaningful opportunity to acquire 700 MHz spectrum. However, this opportunity will not be realized unless the FCC adopts a specific band plan that is consistent with the needs of small and regional carriers.

In fact, the development of the 700 MHz Commercial Services band plan could be one of the single most important decisions the FCC will make in terms of ensuring that rural America is not left behind in receiving access to affordable, high-speed broadband services. As Commissioner Jonathan S. Adelstein recently testified before Congress, the 700 MHz Commercial Services band auction represents “a historic opportunity” and it is critical the FCC “provide a diverse group of licenses so that all bidders have an opportunity to obtain licenses that best match their business plan.”⁵ This will serve the public interest by promoting competition and access to wireless services in rural areas.

A. The FCC’s Proposed Reconfiguration of the Lower 700 MHz Commercial Services Band Will Serve the Public Interest

Union supports the FCC’s proposed reconfiguration of the Lower 700 MHz Commercial Services band. When the FCC previously requested comment on whether there was a need for smaller geographic service area 700 MHz licenses, a diverse group of small, mid-sized, regional and rural carriers, including Union, submitted a Balanced Consensus Plan that provided for a mix

⁵ *Maximizing the Value of Broadband Services to Rural Communities: Hearing before the Subcomm. on Rural and Urban Entrepreneurship of the House Comm. on Small Bus.*, 110th Cong. 6 (2007) (statement of Jonathan S. Adelstein, Commissioner, Federal Communications Commission).

of license areas.⁶ As part of the Balanced Consensus Plan, Union supported licensing the unpaired spectrum in the Lower 700 MHz E Block on a REAG basis, the B Block on a CMA basis, and the A Block on a REAG basis. Subsequently, Union joined with several other supporters of the Balanced Consensus Plan in urging the FCC to, at a minimum, ensure that at least one of the paired frequency blocks is licensed on a CMA basis, one paired frequency block is licensed on a EA basis, and the remaining unpaired spectrum is licensed on a REAG basis.⁷

The FCC's proposed band plan implements these important elements and ensures that applicants seeking to provide localized services in rural areas will be able to compete for spectrum. Furthermore, licensing the Lower 700 MHz Commercial Services band B Block on a CMA basis will allow existing licensees in the adjacent C Block, which was auctioned on a CMA basis, to create a larger block by acquiring another similarly sized spectrum block in the 700 MHz Commercial Services band auction. This will facilitate the goal of providing service to rural areas by enabling rural 700 MHz licensees, such as Union, to efficiently integrate the 700 MHz spectrum with existing systems that are licensed over similar geographic areas. The proposed Lower 700 MHz Commercial Services band plan will also provide opportunities for

⁶ Letter from Alltel *et al.* to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed Oct. 20, 2006) ("Balanced Consensus Plan") (signatories to the Balanced Consensus Plan are Alltel, Aloha, Blooston, C&W, ConnectME Authority, Corr, Dobson, Leap, Maine Office of Chief Information Officer, MetroPCS, NTCA, Nebraska PSC, North Dakota PSC, RCA, RTG, Union, U.S. Cellular, Vermont *et al.*, Vermont Telephone Company); *See also* Letter from T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed April 18, 2007); Letter from SpectrumCo to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (filed April 19, 2007).

⁷ Letter from Alltel *et al.* to FCC Chairman Kevin Martin and Commissioners Jonathan Adelstein, Michael Copps, Deborah Tate, and Robert McDowell, FCC, *Ex Parte* in Docket No. 06-150 (filed April 18, 2007) (Signatories include Alltel, Aloha, Blooston, C&W, Corr, Dobson, Leap, MetroPCS, NTCA, RCA, RTG, Union, and U.S. Cellular).

regional and larger carriers to use the CMA/EA/REAG building block approach to best meet their individual business plans.

B. The FCC Should Adopt the Second Proposed Reconfiguration of the Upper 700 Commercial Services Band

Union supports the FCC's second proposal for reconfiguration of the Upper 700 MHz Commercial Services band to license a total of 34 MHz of commercial spectrum using a mix of REAG, EA and CMA geographic licensing areas.⁸ As part of the Balanced Consensus Plan, Union supported licensing the Upper 700 MHz Commercial Services band C Block (comprised of two 5-MHz paired blocks) on a CMA basis, and the Upper 700 MHz Commercial Services band D and E Blocks (each comprised of two 5-MHz paired blocks) on a EA basis. Subsequently, Union and several other supporters of the Balanced Consensus Plan filed an *ex parte* letter emphasizing the importance of dividing the existing 20-MHz D Block into two 10-MHz paired frequency blocks, with at least one of the two subdivided frequency blocks available on a geographic basis smaller than a REAG.

The second proposal for reconfiguration of the Upper 700 MHz Commercial Services band reflects an appropriate balance of geographic licensing sizes that meets Congress's goal of "disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by minority groups and women."⁹ This proposal ensures that there will be two blocks licensed on a geographic basis smaller than a REAG – the C and D Blocks. Union recommends that the C Block be auctioned on a CMA basis. In the *Rural Report and Order*, the FCC adopted several measures to "promote access to spectrum and facilitate capital formation for entities seeking to serve rural areas or improve service in rural

⁸ 700 MHz *FNPRM* at 71-72, ¶ 192-293.

⁹ 47 U.S.C. § 309(j)(3)(B).

areas.”” Among other things, the FCC affirmed that assigning a variety of licenses “will also provide flexibility in service offerings, for example, where the use of MSAs and RSAs in conjunction with other sized licensed areas may allow licensees to focus on consumers that require localized use without the need for roaming service.””

In adopting the geographic licensing sizes for the auction of AWS licenses in the 1.7GHz and 2.1 GHz bands, the FCC appropriately implemented the objectives of Section 309(j) by including a varied selection of different sized areas in the band plan for the AWS spectrum to “provid[e] carriers with the flexibility to tailor their licensing areas to meet their individual business needs and goals.”¹² The AWS auction was an enormous success as demonstrated by the ability of small, rural carriers to obtain spectrum.¹³ Similarly, the FCC’s second proposal for reconfiguration of the Upper 700 MHz Commercial Services band would meet these objectives by providing opportunities for small providers in rural areas, as well as new entrants seeking to

¹⁰ Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19080 ¶ 1 (2004) (*Rural Report and Order*).

¹¹ *Id.* at 19096 ¶ 31.

¹² Service Rules for Advanced Wireless Services in the 1.7GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162, 25175 ¶ 35 (2003) (*AWS-I Report and Order*); *See also* Service Rules for Advanced Wireless Services in the 1.7GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Order on Reconsideration*, 20 FCC Rcd 14058, 14066 ¶ 14 (“RSAs and MSAs allow entities to mix and match rural and urban areas according to their business plans and that, by being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies”).

¹³ FCC News Release, “Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction,” (Sept. 18, 2006).

establish a nationwide footprint, and by affording bidders flexibility to aggregate smaller licensing areas.

Union strongly opposes any argument that the only way to ensure broadband service to rural consumers is to place the 700 MHz Commercial Services band licenses solely in the hands of large, nationwide carriers or satellite providers.¹⁴ The use of smaller license areas increases the likelihood that small entities such as Union will participate in the auction. The suggestion that auctioning 700 MHz spectrum in large license areas will lead to an increase in service to rural areas is unsupported by the results of the FCC's previous spectrum auctions and would unfairly shut out small carriers who are in the best position to serve rural consumers.¹⁵

Most small and regional carriers have strong ties to their local communities and a unique knowledge of the needs of rural consumers. On the other hand, large carriers are more likely to focus on serving the most heavily populated areas of their license areas to the exclusion of rural consumers. A primary means of improving broadband service in rural areas is to ensure that carriers that seek to serve rural areas are not prevented from doing so because they lack access to adequate spectrum. Therefore, the FCC should avoid adopting any band plan that would restrict opportunities for smaller carriers to obtain spectrum in the 700 MHz Commercial Services band.

¹⁴ 700 MHz FNPRM at 70-71, ¶¶ 190-191.

¹⁵ See e.g., Comments of RCA in WT Docket Nos. 02-381, 01-04, and 03-202 at 3-4 (filed Jan. 13, 2005); Comments of NTCA in WT Docket Nos. 02-381, 01-04, and 03-202 at 3-8 (filed Dec. 29, 2003).

111. THE FCC SHOULD NOT IMPOSE ON RURAL CARRIERS STRICT GEOGRAPHIC BASED PERFORMANCE REQUIREMENTS IN CONJUNCTION WITH A “KEEP WHAT YOU USE” RULE

Union opposes the FCC’s proposal to require each 700 MHz Commercial Services band licensee to meet strict performance requirements based on geographic benchmarks, and to implement a re-licensing mechanism to reclaim spectrum from licensees that fail to meet the interim benchmarks. In particular, the FCC proposes that each licensee provide coverage to 25 percent of the geographic area of the license within three years of the grant of the initial license, 50 percent within five years, and 75 percent within eight years. This one-size-fits-all approach is inconsistent with the FCC’s goals of promoting access to spectrum and facilitating the deployment of service in rural areas.

The FCC’s proposal runs contrary to the overwhelming support by a broad mix of large, medium, and small carriers in this proceeding for retaining the existing substantial service standard instead of imposing a re-licensing scheme.¹⁶ It is also contrary to the FCC’s long-standing commitment to a market-based approach and flexible-use policies. The FCC has previously stated that the existing substantial service standard, along with the safe harbor provisions for providing service to rural areas, provides small carriers with the “flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic benchmarks.”¹⁷ The FCC has not demonstrated that there is any need to depart from these policies or why different performance standards should be required for licensees in the 700 MHz Commercial Services band as opposed to the majority of other wireless services, including the AWS spectrum.

¹⁶ 700 MHz FNPRM at 210, n. 453.

¹⁷ Rural Report and Order at 19121 ¶ 76.

While Union appreciates the FCC's efforts to create incentives to improve service to rural areas, Union also shares the concern expressed by Commissioner Michael J. Copps that the FCC must not "unfairly punish licensees – especially in rural areas – who cannot engage in aggressive build-out for perfectly good economic reasons." In the event that the FCC does adopt performance benchmarks beyond the substantial service standard, the FCC should also adopt special rules for carriers who serve rural areas. As the FCC has observed, "the economics of providing service can be significantly different in rural areas as compared to urban areas" and, therefore, the FCC's "market-based policy acknowledges that market characteristics, especially demographics, will affect the optimal provision of service in rural areas."¹⁹

Union recommends that if 700 MHz licensees must meet performance requirements based on interim geographic benchmarks, the FCC should not consider any land owned, leased, or managed by the Federal government as part of the relevant service area. Instead, 700 MHz licensees must be able to meet the benchmarks by providing coverage to the relevant percentage of land that is not owned, leased, or managed by the Federal government. As is probably the case with many other carriers that serve rural areas, a significant percentage of the land in Union's service areas is managed by the Federal government.²⁰ Union (and its rural customers)

¹⁸ 700 MHz FNPRM (Separate Statement of Commissioner Michael J. Copps at 4)

¹⁹ *Rural Report and Order*. at 19099, n. 111

²⁰ BLM manages approximately 18.4 million surface acres in Wyoming (<http://www.blm.gov/style/medialib/blm/wy/information/annualreports.Par.66180.File.dat/2006a.nrpt.pdf>); nearly 23 million surface acres or 42 percent of the land in Utah (http://www.blm.gov/ut/st/en/info/about_blm.2.html); and approximately 8.4 million surface acres in Colorado (http://www.blm.gov/co/st/en/BLM_Information/about_blm.2.html). The Forest Service manages approximately 16 million acres in Colorado, 9.2 million acres in Utah, and 9.7 million acres in Wyoming (<http://www.fs.fed.us/land/staff/lar/LAR06/table4n>). NPS manages approximately 673,489 acres in Colorado, 2,110,604 acres in Utah, and 2,563,940 acres in Wyoming (http://www.nps.gov/pub_aff/refdesk/index2005_07.pdf).

should not be penalized by the FCC for not being able to gain access to these lands based on reasons beyond Unions' control.²¹

At a minimum, the FCC should incorporate into the geographic-based build out requirements the substantial service safe harbor provisions, which state that a rural carrier is deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the "rural areas" within its license area. The substantial service safe harbor provision for rural carriers, and the important policy goals behind it, would be rendered irrelevant by imposing onerous benchmarks on rural carriers that fail to take into account the economics of providing service in rural areas. Under the safe harbor provisions, a rural carrier is "free to meet the substantial service test by satisfying one of the safe harbors or providing some alternative coverage to its licensed area, depending upon the individual needs of [its] consumers or [its] own unique business plans."²² The safe harbor provision would become meaningless if the proposed performance requirements are adopted because rural carriers would not be able to tailor their buildout plans based on the individual needs of their customers or their unique business plans. Instead, rural carriers would be forced to comply with arbitrary benchmarks that are much more arduous.

Union urges the FCC to thoroughly consider this issue before proceeding with the 700 MHz Commercial Service band auction. If the FCC determines that geographic based performance requirements are necessary even for smaller geographic licensing areas, Union

²¹ Despite various Executive and Congressional directives that require Federal agencies to make land available for the siting of wireless communications infrastructure, Union's experience is that Federal land management agencies (*e.g.*, Bureau of Land Management (BLM), U.S. Forest Service (Forest Service), and National Park Service (*NPS*)) do not always comply with these directives in a timely manner and that the process to apply for a communications site alone can often take years.

²² *Rural Report and Order* at 19124¶ 80.

recommends that the FCC incorporate the safe harbor provisions into the geographic benchmarks and adopt interim deadlines based on the requirement that a licensee serve 75 percent of the geographic areas of at least 20 percent of the rural areas within the licensed area. For example, Union suggests that the FCC could adopt performance requirements for rural areas that require licensees serving these areas to provide coverage to 25 percent of the geographic areas of at least 10 percent of the rural areas within 5 years of the initial license grant, 50 percent of the geographic area of at least 15 percent of the rural areas within 8 years of the license grant, and 75 percent of the geographic area of at least 20 percent of the rural areas by the end of the license term. Such a formulation would meet the twin goals of ensuring that carriers serve rural areas based on concrete benchmarks while preserving flexibility for carriers to develop rural-focused business plans based on the individualized needs of their customers.

Alternatively, the FCC should extend the buildout requirements for rural areas so that licensees serving these areas are not unfairly punished because they cannot engage in aggressive build outs for legitimate economic reasons. Even if rural carriers could meet an artificially short buildout deadline, there may be relatively few types of equipment available for use in this band in the early period after the spectrum is auctioned. With unique service areas and fewer potential subscribers, rural carriers must be especially prudent in selecting equipment. Until the 700 MHz equipment market matures, rural carriers would have limited options to meet a shortened buildout period and limited choices of equipment to make available for customers. Therefore, the FCC should, at a minimum, lengthen the proposed build out requirements for carriers serving rural areas.²³

²³ Dobson Comments at 6 (filed Sept. 29, 2006) (“Dobson submits that a period of time in excess of the 5-year build-out for PCS licenses – perhaps seven or eight years – would be (continued...)”) (continued...)

At most, the FCC should limit the applicability of the proposed geographic benchmarks and the re-licensing mechanism to licensees who obtain large geographic-sized license areas. Union agrees with the Blooston Rural Carriers that a keep-what-you-use re-licensing approach for CMA-sized licenses that includes RSAs would threaten the ability of rural carriers to most effectively deploy broadband services.²⁴ While re-licensing could be useful to rural carriers by freeing up “unused” spectrum initially licensed to a large carrier, it would also punish rural carriers who are licensed in CMAs or other small license areas. Smaller carriers lack access to the capital of large carriers and do not exercise the same market power as large carriers in terms of exercising leverage. While large carriers may obtain spectrum rights over a larger geographic area than they intend to serve, rural carriers licensed in small areas bid on the spectrum precisely because they intend to serve the population residing in rural areas.

Limiting the proposed geographic benchmarks and re-licensing approach to large license areas would promote the goal of providing service to rural areas because it would encourage large carriers to build out to rural areas, as opposed to focusing on urban areas with large populations. Alternatively, it would encourage licensees of large geographic areas to partition off unserved areas to other rural carriers. It would facilitate the ability of carriers to obtain spectrum via the secondary market because it would create incentives for larger carriers to negotiate with rural carriers and enter into spectrum leasing agreements to provide service to rural areas.

appropriate for 700 MHz band licensees to give them adequate time to construct consistent with prudent business planning.”)

²⁴ Blooston Rural Carriers Comments at 7 (filed Sept. 29, 2006).

Union also urges the FCC not to impose burdensome recordkeeping or filing requirements on small carriers. While the FCC's proposal to require licensees to demonstrate compliance with the benchmarks by filing maps and other supporting documentation may be appropriate for larger carriers, such detailed reporting requirements could be overly burdensome for smaller companies. In addition, Union suggests that forfeitures or other penalties beyond relinquishment of the license (or return to the FCC on a "keep what you use" basis) would be excessive for smaller licensees and should not be considered without appropriate exceptions for circumstances beyond the licensee's control.

IV. THE FCC SHOULD NOT ADOPT THE FRONTLINE PROPOSAL BECAUSE IT WOULD NEGATIVELY AFFECT RURAL CONSUMERS

Union opposes the proposal submitted by Frontline Wireless, LLC ("Frontline") because it would restrict the amount of spectrum that would otherwise be available for commercial carriers to serve rural areas. As the FCC noted, if the Frontline proposal is adopted, "the amount of spectrum to be auctioned for commercial services via flexible service and technical rules in the Upper and Lower 700 MHz Band would decrease by ten megahertz, from 60 to 50 megahertz."²⁵

In particular, Frontline's proposal is inconsistent with the second proposal for reconfiguration of the Upper 700 MHz Commercial Services band and, therefore, it would negatively affect the timely deployment of broadband service to rural areas. Under Frontline's proposal, the upper half of the current 20-MHz D Block would be auctioned as a single nationwide 10-MHz license at 757-762/787-792 MHz. Frontline's proposal is contrary to Congress's stated intent and the FCC's goal of creating smaller blocks and geographic-sized

²⁵ 700 MHz FNPRM at 101 ¶ 279.

licenses areas to encourage small, mid-sized, and regional carriers to obtain spectrum. Instead, it would create a nationwide license that would only be available to a single licensee under numerous restrictions. If large commercial carriers are unable to bid on the E Block because it is reserved under Frontline's proposal, they will be limited to bidding on the C and D Blocks. This will drive up the prices of the C and D Blocks and make it extremely difficult for small, rural carriers to compete for spectrum in the Upper 700 MHz Commercial Services band.

Small, rural carriers such as Union play an extremely important role in public safety communications. Union cooperates extensively with local and Federal public safety agencies to provide critical emergency communications in rural areas. Individual subscribers also rely on Union's wireless communications service in emergency situations. Union has applied to join the Wyoming State Emergency Response Commission, as well as the Local Emergency Preparedness Committee for Uinta County. Union has also received requests for improved coverage from tribal, local, and Federal governmental public safety agencies. While these governmental agencies want residents in their jurisdictions to have access to wireless communications during emergencies, many of these agencies also rely on Union's network for their own communications in certain emergency situations. Business users, such as energy-related companies, have also asked Union to provide wireless communications for their employees and subcontractors. These energy companies require wireless communications for access to emergency 911 services when working in remote areas and, without this service, will not commence operations.²⁶ If adopted, Frontline's proposal would hurt the ability of rural

²⁶ Although many energy companies also use private land mobile radio services, they have found that Union's interconnected wireless services are needed to access emergency 911 services.

carriers to obtain 700 MHz spectrum that could be used to support these vital public safety communications.

Furthermore, the FCC would be taking a risk by providing spectrum to a single licensee based on the E Block licensee fulfilling its promises to construct and manage the network in the future. Even if the goal is laudable, this type of arrangement would be susceptible to abuse and finger-pointing if the E Block licensee is unable to deliver on its promises. In the 800 MHz rebanding proceeding, Nextel received an up-front grant of 10 MHz of nationwide spectrum in the 1.9 GHz band in exchange for agreeing to relinquish some of its 800 MHz spectrum and pay for the relocation of all affected 800 MHz licensees to resolve interference to public safety communications.²⁷ Recently, after several major public safety groups expressed concern about the slow pace of rebanding, the FCC had to step in and clarify certain provisions in order to “spur the parties to reorient their approach to this process.”²⁸ The public safety groups complained that “public safety personnel are being forced into unnecessary disputes” and that “[m]onths and hundreds of thousands of dollars are being wasted in sometimes bitter negotiations.”²⁹

²⁷ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) as amended by Erratum, 19 FCC Rcd 19651 (2004), and Erratum, 19 FCC Rcd 21818 (2004) (800 MHz *Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (800 MHz *Supplemental Order*); and Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) as amended by Erratum, DA 05-3061 rel. Nov. 25, 2005.

²⁸ Improving Public Safety Communications in the 800 MHz Band; *Memorandum Opinion and Order*, WT Docket No. 02-55, FCC 07-92 (rel. May 18, 2007).

²⁹ Letter from Wanda McCarley, President, Association of Public-Safety Communications Officials-International; Harlin McEwen, Chairman, Communications & Technology Committee, (continued...)

There are too many obstacles in Frontline's proposal that could cause lengthy delays. The E Block licensee would not actually be awarded the license until it negotiated an agreement with the national public safety licensee, which, if the E Block licensee is unable to do so, would require a lengthy arbitration process or the FCC ultimately reclaiming the spectrum. In the event that the E Block licensee encounters financial difficulties or is otherwise unable to fulfill its obligations, it would further delay service to rural areas. Frontline's proposal is contingent upon the E Block licensee being able to successfully meet the needs of the public safety community in a timely and efficient manner. If, for example, public safety entities challenge the E Block Licensee's compliance with its public safety obligations down the road, as has shown to be the case in the 800 MHz rebanding proceeding, there will likely be delays in buildout of the network.

Given the problems encountered by public safety groups in the 800 MHz rebanding proceeding, there are significant questions as to whether the FCC will really be able to enforce the build out requirements and other terms of Frontline's proposal to ensure that the public safety network will be deployed in a timely manner. If the FCC proposes to issue fines for failing to meet the deadlines, the E Block Licensee and public safety groups will likely argue that the money would be better spent on build out of the network. If the FCC proposes to reclaim some of the spectrum, that would defeat the purpose of a nationwide network. Therefore, the FCC will be extremely limited in its options for overseeing the E Block licensee's compliance.

International Association of Chiefs of Police, Communications Advisor, Major City Chiefs Association, National Sheriffs Association, and Major County Sheriffs Association; Alan Caldwell, Senior Advisor, Government Relations, International Association of Fire Chiefs, to Kevin Martin, Chairman, Federal Communications Commission, WT Docket No. 02-55 (filed May 9, 2007).

V. THE FCC SHOULD NOT ADOPT ANY PROPOSAL TO LIMIT THE ELIGIBILITY OF RURAL INCUMBENT WIRELINE OR WIRELESS CARRIERS TO OBTAIN 700 MHZ SPECTRUM

The FCC requests comment on a proposal by the Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (“PISC”) to exclude incumbent local exchange carriers (“ILECs”), incumbent cable operators, and large wireless carriers from eligibility in the 700 MHz band. While the PISC proposal appears to be targeted against large, “dominant providers of broadband and wireless services,” rural companies such as Union that hold 700 MHz licenses and provide broadband services could be excluded from bidding by the overly vague eligibility restrictions.³⁰

PISC appears to recognize the importance of small, rural carriers in providing vital communications services to underserved remote areas. For example, PISC echoes the position set forth in the Balanced Consensus Plan that the FCC “should ensure that small carriers have a sufficient number of licenses that they can realistically expect to win”³¹ PISC also acknowledges that “[l]ocal providers are far more likely to serve local communities.”³² Therefore, it would defy common sense to suggest that these very same local providers should somehow be denied access to the 700 MHz band or be unfairly disadvantaged in their ability to bid on 700 MHz spectrum.

On the contrary, the FCC is statutorily mandated to promote economic opportunity and competition by “disseminating licenses among a wide variety of applicants, including small

³⁰ *Ex Parte* Comments of the Ad Hoc Public Interest Spectrum Coalition, PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86, at 9 (filed Apr. 3, 2007) (PSIC *Ex Parte* Comments).

³¹ PSIC *Ex Parte* Comments at 25.

³² *Id.*

businesses, rural telephone companies, and businesses owned by members of minority groups and women.”³³ PISC asserts that a ban on participation in the 700 MHz auction by ILECs and incumbent cable operators is necessary to promote competitive entry and prevent abuses by incumbents, such as blocking new entrants and warehousing spectrum. However, small rural carriers are focused on providing localized service and lack incentives or market power to warehouse spectrum or block new entrants who are focused on establishing a national footprint

The FCC has consistently rejected proposals to limit the eligibility of potential bidders or otherwise impose restrictions on the ability of carriers to participate in spectrum auctions. Most recently, the FCC sought comment prior to the AWS auction on whether it should set aside spectrum for new entrants or other types of applicants in the 1.7GHz and 2.1 GHz bands.³⁴ The FCC ultimately determined that opening the 1.7GHz and 2.1 GHz bands “to as wide a range of applicants as possible would encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure efficient use of the spectrum.”³⁵ Accordingly, the FCC declined to limit access to the AWS spectrum. At least in terms of offering a variety of licenses to ensure that small rural carriers have a meaningful opportunity to obtain 700 MHz spectrum, Union supports the FCC’s efforts to increase access to the 700 MHz band. Therefore, the FCC must ensure that it does not limit the eligibility of incumbent rural telephone companies, cable operators, or wireless providers from obtaining spectrum in the 700 MHz Commercial Services band.

³³ 47 U.S.C. § 309(j)(3)(B).

³⁴ Service Rules for Advanced Wireless Services in the 1.7GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, 17 FCC Rcd 24135 ¶ 2 (2002) (“AWS NPRM”).

³⁵ *AWS Report and Order* at 25220 ¶ 149

VI. CONCLUSION

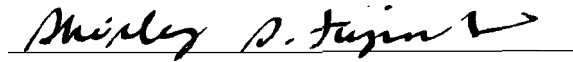
Union supports auctioning additional spectrum in the 700 MHz bands on the basis of smaller geographic areas, such as CMAs, especially in rural areas. This will create opportunities for rural carriers to compete for licenses in the 700 MHz Commercial Services band and will foster the deployment of wireless broadband service to rural consumers. Therefore, Union supports the FCC's proposed reconfiguration of the Lower 700 MHz Commercial Services band and the FCC's second proposed reconfiguration of the Upper 700 MHz Commercial Services band.

The FCC should not impose overly burdensome build out requirements based on geographic benchmarks combined with a re-licensing mechanism on small, rural carriers who cannot afford to engage in aggressive build out for perfectly good economic reasons. While the FCC may need to create incentives for large, nationwide carriers or satellite providers to build out to rural areas, the FCC must be careful that it does not adopt any rules that have the unintended consequence of discouraging rural carriers from participating in the 700 MHz Commercial Services band auction. Similarly, the FCC should not adopt the Frontline proposal because it would limit the amount of spectrum available for rural carriers and would likely delay the actual deployment of broadband services to rural areas. The FCC should also reject any proposals that would limit the eligibility of rural carriers to obtain 700 MHz spectrum.

WHEREFORE, THE PREMISES CONSIDERED, Union respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

UNION TELEPHONE COMPANY

A handwritten signature in black ink, reading "Shirley S. Fujimoto", followed by a checkmark-like flourish. The signature is written over a horizontal line.

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